

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On)	Lead Case No. 02-C-5893
Behalf of Itself and All Others Similarly)	(Consolidated)
Situated,)	
) <u>CLASS ACTION</u>
Plaintiff,)	
) Judge Ronald A. Guzman
vs.)	Magistrate Judge Nan R. Nolan
)
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
_____)	

**PLAINTIFFS' OPPOSITION TO PRESENTMENT OF DEFENDANTS' PREMATURE
CROSS-MOTION PURSUANT TO FED. R. CIV. P. 37(C) TO EXCLUDE
DECLARATIONS OF PLAINTIFFS' PREVIOUSLY CONCEALED WITNESSES**

Plaintiffs respectfully submit this opposition to the January 22, 2009 presentment of Defendants' Cross-Motion Pursuant to Fed. R. Civ. P. 37(c) to Exclude Declarations of Plaintiffs' Previously Concealed Witnesses. Defendants' cross-motion is premature and ignores the Court's multiple admonitions that any motion to exclude plaintiffs' witnesses should be filed on January 30, 2009, at which time all motions *in limine* are due. The Court specifically admonished defendants that it would "take [defendants' motion to bar witnesses] **with the motions in limine**" to be filed on January 30, 2009 and that "[w]e'll do that during the final pretrial conference." *See* Dec. 16, 2008 Hr'g Tr. at 22:12-18 (emphasis added). Counsel for defendants responded, "[w]e'll file them with the *in limines*, your Honor. Perfectly happy to do that." *Id.* at 23:14-15. Instead, despite the Court's clear directives, defendants filed this cross-motion.

Besides flouting the Court's clear directives, defendants' cross-motion will frustrate plaintiffs' efforts to complete final preparation of the Final Pretrial Order materials, motions *in limine*, trial brief and other materials due on January 30, 2009. Plaintiffs should not be required to travel to Chicago and brief the same motion twice, particularly at a time when the parties should be focused on preparing for a trial that is fast approaching. Nor should defendants be permitted two bites at the apple. The upcoming weeks will be much better spent if both parties are able to focus on the task currently at hand: briefing *in limine* and *Daubert* motions and conferring in an effort to reach an agreement concerning the Final Pretrial Order, all by January 30, 2009. Neither plaintiffs nor the Court should be burdened by defendants' premature cross-motion at this time.

In an effort to avoid subjecting the Court to an unnecessary presentment this week, plaintiffs request that the Court vacate the January 22, 2009 presentment and require defendants to follow the

Court's directives that they file their motion with the related *in limine* and *Daubert* motions that this Court scheduled for filing on January 30, 2009.

DATED: January 20, 2009

Respectfully Submitted,

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DECLARATION OF SERVICE BY ELECTRONIC MAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway Suite 1900, San Diego, CA 92101.

2. That on January 20, 2009, declarant served by electronic mail and by U.S. Mail to the parties the **PLAINTIFFS' OPPOSITION TO PRESENTMENT OF DEFENDANTS' PREMATURE CROSS-MOTION PURSUANT TO FED. R. CIV. P. 37(C) TO EXCLUDE DECLARATIONS OF PLAINTIFFS' PREVIOUSLY CONCEALED WITNESSES:**

The parties' email addresses are as follows:

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and by U.S. Mail to:

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David R. Scott, Esq.
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I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day of January, 2009, at San Diego, California.

/s/ Amy M. Coker

AMY M. COKER